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In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 889....

LENORE S. ROBINETTE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Sixth Circuit, and
BRIEF IN SUPPORT THEREOF.**

T. G. THOMPSON,
1786 Union Commerce Building,
Cleveland 14, Ohio,
Counsel for Petitioner.

CHARLES FAHY,
Solicitor General,
Washington, D. C.,
Counsel for Respondent.



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PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Sixth Circuit.

*To the Honorable Harlan Fiske Stone, Chief Justice of
the United States, and the Associate Justices of the
Supreme Court of the United States:*

The Petition of Lenore S. Robinette, who also was the
petitioner below, respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a Petition for a Writ of Certiorari to review a judgment of the Circuit Court of Appeals for the Sixth Circuit which affirmed the judgment of the United States Board of Tax Appeals, now the Tax Court of the United States, on an appeal taken by petitioner to said Board for re-determination of an income tax deficiency asserted by Respondent with respect to the income for the year 1918 of one Charles C. Cohn. It will be shown presently how petitioner came to be brought into the case.

(a) The facts, history of the case and statement of contentions of parties as to basic question involved.

Charles C. Cohn was a citizen of the United States, and resided and practiced law in Manila, in the Philippine Islands, from 1903 until about June, 1919. (R. 22, 32.)

In February, 1919, he filed with the Collector of Internal Revenue, at Manila, his income tax return of his income from all sources for the year 1918. Thereafter he paid to said Collector the taxes shown by said return to be due, also an additional assessment for that year. (R. 21, 33.)

In July, 1919, he returned to the United States and became a resident of San Francisco. (R. 22, 33.)

In October, 1919, he formally changed his name from Charles C. Cohn to Charles C. Cole. (R. 22, 33.)

In August, 1923, he wrote a letter to the Collector of Internal Revenue at Baltimore, telling said Collector that his income tax return for the year 1918 had been filed with the Collector of Internal Revenue at Manila. (R. 22, 28, 33.)

In September, 1931, he died, a resident of San Francisco. A Federal estate tax return for his estate was filed with the Collector there. That return was examined by Respondent and it was thereupon determined by Respondent that in computing the net value of the deceased taxpayer's estate subject to that tax certain debts were deductible from the gross estate, but among them was no deficiency income tax item for the year 1918 for payment of which either he or his estate was liable. (R. 22, 33, 24.)

In November, 1932, certain property of his estate worth in excess of \$30,712.22, or the aggregate of the amounts originally sought to be collected by Respondent from petitioner herein, was distributed to his son, Creswell C. Cole. Petitioner was then the wife of said son. (R. 23, 4, 33.)

In September, 1935, said son died, a resident of a suburb of San Francisco. A Federal estate tax return for his estate was filed with the Collector there. That re-

turn was examined by Respondent and it was thereupon determined by Respondent that in computing the net value of said son's estate subject to that tax certain debts were deductible from the gross estate, but among them was no item representing an income tax deficiency of Charles C. Cohn for the year 1918 for the payment of which said son or his estate was liable as transferee. (R. 23, 33, 24.)

In November, 1936, the residue of said son's estate, worth in excess of \$30,712.22, was distributed to petitioner. Petitioner later remarried. (R. 23, 33.)

In May, 1940, Respondent mailed to petitioner as transferee his notice of determination of the amount of the income tax deficiency for the year 1918 which is in controversy herein. Appeal from said determination was thereupon taken by petitioner to the Board of Tax Appeals. (R. 10, 3.)

In August, 1942, the Board sustained Respondent's determination of petitioner's liability and entered judgment in favor of Respondent and against petitioner as such transferee for the amount of the said deficiency in controversy for the year 1918, to-wit, \$27,914.38 and interest thereon from July 1, 1939. (R. 31, 45.)

In November, 1942, pursuant to a stipulation conforming to the provisions of I. R. C. Section 1141(b)(2), petitioner filed her petition to have the Board's judgment reviewed by the Circuit Court of Appeals for the Sixth Circuit. (R. 48.)

On December 8, 1943 that Court affirmed the judgment of the Board of Tax Appeals. (R. 63, 69.)

On January 24, 1944 petitioner's Petition for Rehearing was denied by that Court. (R. 77.)

No assessment of the deficiency has ever been made against either Charles C. Cohn (later Cole) or his estate, or Creswell C. Cole or his estate. (R. 23, 33.)

Charles C. Cohn (later Cole) will hereinafter be referred to as the taxpayer.

The deficiency in controversy represents the net amount as income tax for the year 1918 which Respondent contends was imposed by the Revenue Act of 1918 with respect to the taxpayer's income from all sources for that year. (R. 30, 34.) Petitioner contends basically that income tax was imposed with respect to the taxpayer's said income for that year, not at the rates of the Revenue Act of 1918, but only at those of the Revenue Act of 1916 (R. 34.)

(b) Questions Presented Include:

1. Was income tax imposed at the rates prescribed by the Revenue Act of 1918 with respect to the income for that year of the taxpayer, Charles C. Cohn, who during that year resided in the Philippine Islands?

2. Was authority granted to the Respondent to administer the provisions of the Revenue Act of 1918 with respect to the income for that year of any United States citizen who then resided in the Philippine Islands?

3. Was the assessment and collection of the deficiency in controversy barred many years ago by a statute of limitations?

4. Was the question concerning liability for the income tax deficiency in controversy closed when the Respondent computed and determined Federal estate taxes in the estates of each of the transferors, Charles C. Cole and Creswell C. Cole, without taking the now asserted deficiency amount into account as a liability of the estate of either of them?

5. Is petitioner as transferee liable for interest on any of the deficiency in controversy before the taxpayer's liability for the deficiency has been finally established, and if so may deficiency and interest thereon be assessed against her in an aggregate amount greater than the value of the assets shown to have been received by her as transferee?

II.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

In holding and deciding:

(1) That income tax was imposed at the rates prescribed by the Revenue Act of 1918 with respect to the incomes for that year of United States citizens who then resided in the Philippine Islands;

(2) That Respondent had and has authority to administer the provisions of that Act with respect to such incomes;

(3) and (4) That no statute of limitations, or former tax determination made by the Respondent in any Federal estate tax proceeding, operated to bar the assessment of the deficiency against the petitioner as transferee of a transferee of property from the estate of the deceased taxpayer; and

(5) That such assessment can include interest on said deficiency from July 1, 1939, and be for a total amount, including the deficiency and interest thereon together, greater than the value of the property shown to have been received by petitioner as transferee;

Said Circuit Court of Appeals decided Federal questions in a way probably in conflict with applicable decisions of this Court. Moreover in its decision said Circuit Court of Appeals so far departed from or sanctioned departure by a lower Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Some of the said Federal questions decided by said Circuit Court of Appeals are of public importance and have not been, but should be, decided and settled by this Court.

The decision of said Circuit Court of Appeals is inconsistent with decisions of this Court and of other Federal courts in analogous cases. Such cases, being numerous, will be referred to in petitioner's brief which is annexed to

this Petition. Much confusion and litigation will ensue if the questions presented are not finally settled by this Court, especially since many persons like the taxpayer in this case believed in 1919 and thereafter that the tax rate provisions of the Revenue Act of 1918 were not applicable to the income for the year 1918 of any United States citizen who during that year resided in the Philippine Islands. It has been only since about the year 1938 that Respondent has attempted to administer the provisions of the Revenue Act of 1918 in those Islands. Many taxpayers, or persons in a situation similar to that of the taxpayer or the petitioner in this case, will be uncertain as to their liabilities, if any, arising by reason of the interpretations which have been given to the provisions of the Revenue Act of 1918 by said Circuit Court of Appeals.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued under the seal of this Court, directed to the Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and send to this Court for its review a full and complete transcript of the record and proceedings in this cause, No. 9473 on the docket of said Circuit Court, and entitled there as in this Petition, to the end that this cause may be reviewed and the rights of the parties determined by this Court according to law; and that your petitioner may have such other and further relief as to this Court may seem proper and in conformity with law.

And your petitioner will ever pray.

Dated April 10, 1944.

LENORE S. ROBINETTE, *Petitioner*,

By T. G. THOMPSON,

Her Counsel.

